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AMENDMENT TO H.R. 1
OFFERED BY MR. BALLENGER

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Working Families
3 Flexibility Act of 1997".

4 **SEC. 2. COMPENSATORY TIME.**

5 Section 7 of the Fair Labor Standards Act of 1938
6 (29 U.S.C. 207) is amended by adding at the end the fol-
7 lowing:

8 “(r) **COMPENSATORY TIME OFF FOR PRIVATE EM-**
9 **PLOYEES.**

10 “(1) **GENERAL RULE.—**

11 “(A) **COMPENSATORY TIME OFF.**—An em-
12 ployee may receive, in accordance with this sub-
13 section and in lieu of monetary overtime com-
14 pensation, compensatory time off at a rate not
15 less than one and one-half hours for each hour
16 of employment for which overtime compensation
17 is required by this section.

18 “(B) **DEFINITION.** For purposes of this
19 subsection, the term ‘employee’ does not include
20 an employee of a public agency.

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“(2) CONDITIONS. An employer may provide
2 compensatory time to employees under paragraph
3 (1)(A) only if such time is provided in accordance
4 with—

5 “(A) applicable provisions of a collective
6 bargaining agreement between the employer
7 and the labor organization which has been cer-
8 tified or recognized as the representative
9 employees under applicable law, or

10 “(B) in the case of employees who are not
11 represented by a labor organization which has
12 been certified or recognized as the representa-
13 tive of such employees under applicable law, an
14 agreement arrived at between the employer
15 employee before the performance of the work
16 and affirmed by a written or otherwise verifi-
17 able record maintained in accordance with sec-
18 tion 11(c)—

19 “(i) in which the employer has offered
20 and the employee has chosen to receive
21 compensatory time in lieu of monetary
22 overtime compensation; and

23 “(ii) entered into knowingly and vol-
24 untarily by such employees and not as a
25 condition of employment.

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1 “(3) HOUR LIMIT.—

2 “(A) MAXIMUM HOURS.—An employee
3 may accrue not more than 240 hours of com-
4 pensatory time.

5 “(B) COMPENSATION DATE.—Not later
6 than January 31 of each calendar year, the em-
7 ployee’s employer shall provide monetary com-
8 pensation for any unused compensatory time off
9 accrued during the preceding calendar year
10 which was not used prior to December 31 of the
11 preceding year at the rate prescribed by para-
12 graph (6). An employer may designate and
13 communicate to the employer’s employees a 12-
14 month period other than the calendar year, in
15 which case such compensation shall be provided
16 not later than 31 days after the end of such 12-
17 month period.

18 “(C) EXCESS OF 80 HOURS.—The em-
19 ployer may provide monetary compensation for
20 an employee’s unused compensatory time in ex-
21 cess of 80 hours at any time after giving the
22 employee at least 30 days notice. Such com-
23 pensation shall be provided at the rate pre-
24 scribed by paragraph (6).

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1 “(D) POLICY.—Except where a collective
2 bargaining agreement provides otherwise, an
3 employer which has adopted a policy offering
4 compensatory time to employees may dis-
5 continue such policy upon giving employees 30
6 days notice

7 “(E) WRITTEN REQUEST.—An employee
8 may withdraw an agreement described in para-
9 graph (2)(B) at any time. An employee may
10 also request in writing that monetary com-
11 pensation be provided, at any time, for all com-
12 pensatory time accrued which has not yet been
13 used. Within 30 days of receiving the written
14 request, the employer shall provide the em-
15 ployee the monetary compensation due in ac-
16 cordance with paragraph (6).

17 “(4) PRIVATE EMPLOYER ACTIONS.—An em-
18 ployer which provides compensatory time under
19 paragraph (1) to employees shall not directly or indi-
20 rectly intimidate, threaten, or coerce or attempt to
21 intimidate, threaten, or coerce any employee for the
22 purpose of—

23 “(A) interfering with such employee’s
24 rights under this subsection to request or not
25 request compensatory time off in lieu of pay-

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ment of monetary overtime compensation for
overtime hours; or

“(B) requiring any employee to use such
compensatory time.

“(5) TERMINATION OF EMPLOYMENT.—An em-
ployee who has accrued compensatory time off au-
thorized to be provided under paragraph (1) shall,
upon the voluntary or involuntary termination of
employment, be paid for the unused compensatory
time in accordance with paragraph (6).

“(6) RATE OF COMPENSATION

“(A) GENERAL RULE.—If compensation is
to be paid to an employee for accrued compen-
satory time off, such compensation shall be paid
at a rate of compensation not less than—

“(i) the regular rate received by such
employee when the compensatory time was
earned, or

“(ii) the final regular rate received by
such employee,
whichever is higher.

“(B) CONSIDERATION OF PAYMENT.—Any
payment owed to an employee under this sub-
section for unused compensatory time shall be
considered unpaid overtime compensation.

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“(7) USE OF TIME.—An employee—

2 “(A) who has accrued compensatory time
3 off authorized to be provided under paragraph
4 (1), and

5 “(B) who has requested the use of such
6 compensatory time,
7 shall be permitted by the employee’s employer to use
8 such time within a reasonable period after making
9 the request if the use of the compensatory time does
10 not unduly disrupt the operations of the employer.

 “(8) DEFINITIONS. The terms ‘overtime com-
12 pensation’ and ‘compensatory time’ shall have
13 meanings given such terms by subsection (o)(7).”

14 **SEC. 3. REMEDIES.**

15 Section 16 of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 216) is amended—

7 (1) in subsection (b), by striking “(b) Any em-
18 ployer” and inserting “(b) Except as provided in
19 subsection (f), any employer”; and

20 (2) by adding at the end the following:

21 “(f) An employer which violates section 7(r)(4) shall
22 be liable to the employee affected in the amount of the
23 rate of compensation (determined in accordance with sec-
24 tion 7(r)(6)(A)) for each hour of compensatory time ac-
25 crued by the employee and in an additional equal amount

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1 as liquidated damages reduced by the amount of such rate
2 of compensation for each hour of compensatory time used
3 by such employee.”

4 SEC. 4. NOTICE TO EMPLOYEES.

5 Not later than 30 days after the date of the enact-
6 ment of this Act, the Secretary of Labor shall revise the
7 materials the Secretary provides, under regulations pub-
8 lished at 29 C.F.R. 516.4, to employers for purposes of
9 a notice explaining the Fair Labor Standards Act of 1938
10 to employees so that such notice reflects the amendments
made to such Act by this Act.